

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

D. DWAYNE TUCKER,

Plaintiff,

v.

VOLKSWAGEN, *et al.*,

Defendants.

Case No. 17-13427

Honorable Laurie J. Michelson

Magistrate Judge R. Steven Whalen

ORDER GRANTING IN PART DEFENDANTS' MOTION TO COMPEL [29]

Plaintiff D. Dwayne Tucker brings a claim under the Americans with Disabilities Act against DAKO, Volkswagen, and a Volkswagen employee. Tucker says he requested a reasonable accommodation in the workplace so he could continue to perform despite vision problems stemming from diabetes. Currently, the parties are nearing the end of the discovery period.

As part of the discovery in this case, Defendants wish to depose Tucker's treating physician. And they successfully completed about two hours of the treater's deposition. But communication, scheduling, and payment issues have frustrated attempts to complete it. In sum, Defendants subpoenaed the treater but to no avail, so Defendants moved to compel her appearance.

The main sticking point is the treater's fee. The treater seeks a "reasonable fee" per Rule 26(b)(4)(E)(i). Defendants believe this physician is simply entitled to the statutorily provided witness fee because they only intend to question her as a fact witness.

On October 31, 2018, the Court heard oral argument on the motion. The treating physician did not respond to the motion and did not appear for the hearing. For the reasons stated more fully on the record, the Court GRANTS IN PART Defendants' motion to compel (ECF No. 29). Accordingly, Tucker's treating physician is to appear for the completion of her deposition either

on the presently scheduled date of November 7, 2018 or an alternate date mutually agreed upon by the parties. It is further ordered, that the treating physician is entitled to a reasonable fee of \$200 per hour for her time spent at the deposition.

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Date: November 1, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record and/or pro se parties on this date, November 1, 2018, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager